

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KILTER INDUSTRIES, INC.

Plaintiff,

v.

AVON PRODUCTS, INC. AND PETER
WAXMAN,

Defendants.

:
:
: **ECF CASE**
:
: 09 CIV 3490 (RJS)
:
:

: **REPLY DECLARATION**
: **OF ROGER L. ZISSU IN**
: **SUPPORT OF**
: **DEFENDANT'S MOTION**
: **TO DISMISS FIRST**
: **AMENDED COMPLAINT**
:
:
:

I, Roger L. Zissu, declare under penalty of perjury:

1. I am a member of the Bar of this Court and of the law firm Fross Zelnick Lehrman & Zissu, P.C., attorneys herein for Defendants Avon Products, Inc. ("Avon") and Peter Waxman (together, the "Defendants"). This declaration is based on my own personal knowledge and is submitted in support of Defendants' motion to dismiss the First Amended Complaint.

2. For the convenience of the Court in considering Avon's Reply Memorandum, I have attached as exhibits hereto copies of certain pages from two of the three works at issue that Kilter claims to have authored which are reproduced as exhibits 1 and 3 to the First Amended Complaint.

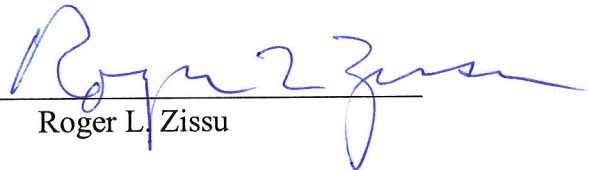
3. Attached hereto as Avon's Exhibit K is a copy of the sixth page from Kilter's Exhibit 1, the "Pitch Presentation Deck," *inter alia*, referencing, the number and kind of Avon products to be offered under the liiv logo.

4. Attached hereto as Exhibit L are copies of the first page, along with pages 5.1, 6.1 and 13.1 from Kilter's Exhibit 3, "Draft 3, May 31, 2006" of the liiv "Brand Book and Style Guidelines," relating to the kind of Avon products to be offered under the liiv logo.

5. Attached hereto as Exhibit M is a copy of page 13.4 from such Brand Book and Style Guidelines, Exhibit 3, containing Kilter's "Copy rules: Trademark and copyright" addressing, *inter alia*, the form, location and content of the trademark and copyright notices to be used on and in connection with the liiv brand products.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
February 9, 2010



Roger L. Zissu

EXHIBIT K



AMN 5152 Avon Wellness Paginations

12p

Total products 17

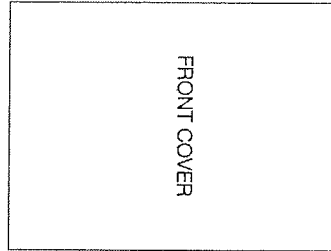
Total pages 12

Merchandising Breakdown

Be Radiant 20%
Be Inspired 30%
Be Well 50%

Product Breakdown

Planet Spa 25%
Curves 40%
Vitamins 20%
Moments 15%



Be Radiant	
2 Icelandic Planet Spa products	1 Icelandic Planet Spa product

Be Inspired	
2 moments products	2 moments product

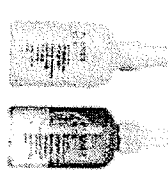
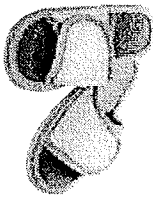
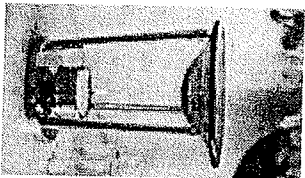
Be Inspired	Be Well
2 moments products	1 Curves product

Be Well	
2 Curves products	1 Curves product

Be Well	
2 Curves products	1 vitamins product

Be Well	
BACK COVER	
2 vitamins products	

EXHIBIT L



i!ivTM
AVON

i!iv Brand Book and Style Guidelines

BOOK #

Do not reproduce or
distribute without permission.



DRAFT 3 May 31, 2006

liiv brand pillars

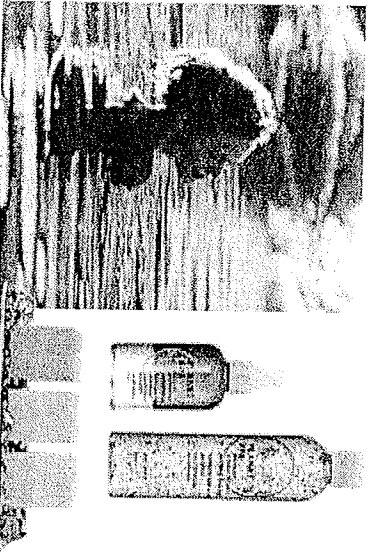


Beauty, fitness and inspiration are all parts of what it means to live well. So we've made these elements the organizing principles of the liiv store. All liiv products fit within the "liiv radiant," "liiv inspired" and "liiv well" architecture.

liiv radiant

Take time out to relax, for benefits you'll feel—and the world will see.

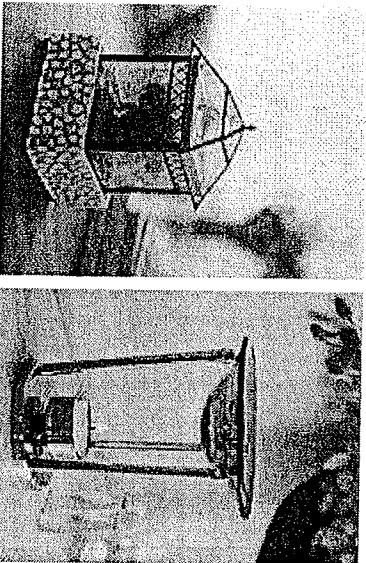
Products could include Planet Spa spa treatments, bath and body, revitalizing shower accessories, and skin care regimens.



liiv inspired

Design your life to invite inspiration, counteract stress, and preserve energy.

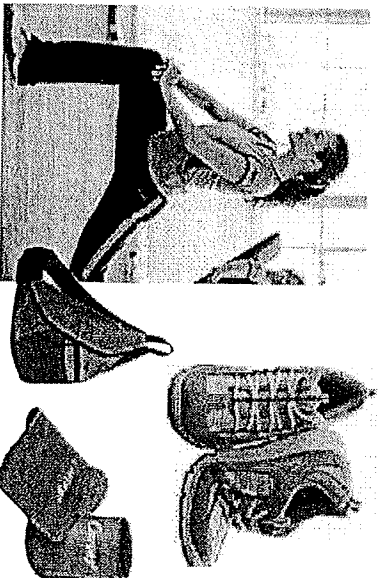
Products could include relaxation treatments, massage oils, aromatherapy, and nurturing touchstones.



liiv well

Harness the wellbeing that comes from fitness and balanced nutrition.

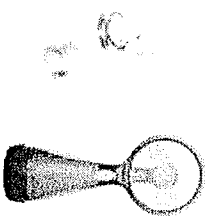
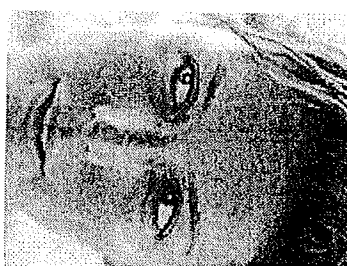
Products could include Curves workout apparel and accessories, healthy foods and accessories, vitamins and nutritional supplements.



Brand personality

DRAFT 3 May 31, 2006

liiv
AYON

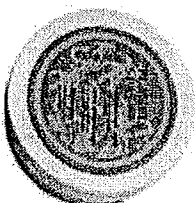
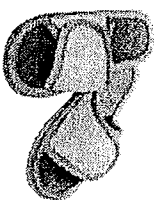


relax



inspire

naturally beautiful



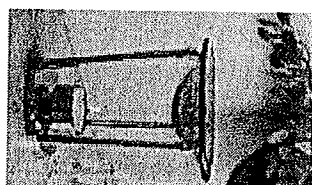
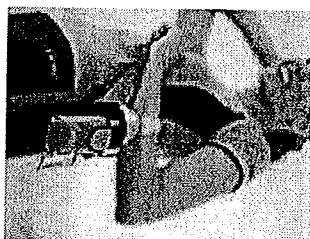
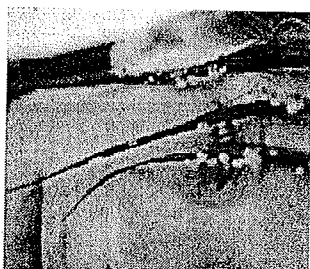
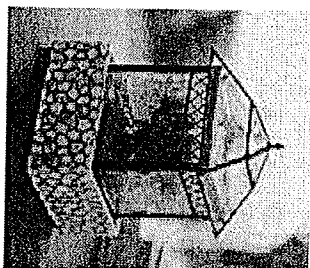
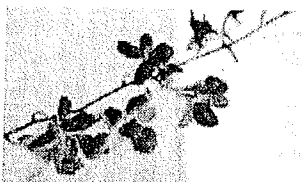
life in balance



me time

indulge

energize



The liiv Brand

Copy rules: Tone and length

Tone and content

The liiv brand uses copy to convey the pleasures and benefits of a healthy lifestyle. Product attributes like ease of use, how it feels, therapeutic ingredients and global origins are highlighted. The liiv voice is helpful yet restrained, showing rather than telling customers how products are used. All copy should be written as complete sentences, with the exception of feature callouts. In video and audio applications, visual and verbal content should be smooth, unhurried, and easy to absorb.

Copy length

All product descriptions can be found on Envoy. Any copy not taken from Envoy must be reviewed by legal. When composing copy for the liiv store, strive to achieve the tone described above as economically as possible. Copy that is too long can complicate the layout and make the reader's job more difficult. When writing copy, please use the following length guidelines:

Product descriptions: No longer than 20-28 words, not including product name

Moments: No longer than 10-12 words; one "moment" per spread

Feature callouts: Limit the amount of callouts per spread

How to use liiv in a sentence

When using the liiv name in typeset copy, it should always be lowercase and bold, even at the beginning of a sentence. The first incidence of liiv in an application should be followed by a TM, after which the TM is dropped. When the liiv name cannot or should not be bolder than the rest of the sentence (for example, in a sentence that is already bold), add the TM to emphasize that liiv is a brand.

PRODUCT DESCRIPTION SAMPLES

Purifying Facial Cleanser

It takes ages for water from Iceland's volcanic springs to surface, but only moments to feel its effects on your skin. This pure, non-drying cleanser dissolves oil and makeup.

Firming Gel Moisturizer

Seeking a natural solution to firmer skin? This light, easily-absorbed gel glides on to replenish vitamins and minerals, leaving skin looking and feeling firmer.

Eye Soothers

Infused with aloe, these cooling patches revitalize vulnerable skin under the eyes to smooth the appearance of lines and reduce puffiness. Try one before applying make-up.

HOW TO USE LIIV™ IN A SENTENCE

Rest easier: Get the Cooling Pillow free with any liiv purchase of \$10 or more.

That's why Avon created liiv™ naturally inspired products that nurture a woman's wellness from the inside out.

EXHIBIT M

Copy rules: Trademark and copyright



DRAFT 3 May 31, 2006

Trademark

The trademark TM symbol must appear on the first incidence of the iliv name in copy. After that, the TM may be dropped. When the iliv name needs to be emphasized as a brand name (as when it appears in a sentence that is already bold), the TM should be added.

Copyright

Update the year in the copyright notice to the year in which the communication is first used publicly.

In a multi-page press release, catalog, etc., the copyright appears at the end of a piece.

A copyright line must appear on all print, POS, Internet and all below-the-line collateral.

It is not necessary on: stadium boards, architecture, Intranet, stationery, small pieces like lanyards, and giveaways.

On TV and video, copyright must be on the slates portion (the non-viewable lead-in tape).

Please check with your local legal group to see if other special rules apply.

The following statements have pending trademarks, and should be followed by the trademark TM symbol:

iliv™
iliv Avon™
iliving well, feeling beautiful™
iliv avon™
iliv™ radiant
iliv™ inspired
iliv™ well

UPDATE THE YEAR

© 2006 Avon Products, Inc.

This needs further legal review based on new TM/bold guidelines/rules